

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                                     |   |                                    |                                 |
|--|--|-------------------------------------|---|------------------------------------|---------------------------------|
| Investigator:<br>Volha Shauchenka                | Team:<br>Squad #3  | CCRB Case #:<br>201604842           | <input type="checkbox"/> Force                        | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |                                     | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 06/05/2016 1:20 PM   | Location of Incident:<br>East 31st Street and Madison Avenue | Precinct:<br>14                     | 18 Mo. SOL<br>12/5/2017                               | EO SOL<br>12/5/2017                |                                 |
| Date/Time CV Reported<br>Sun, 06/05/2016 9:25 PM | CV Reported At:<br>CCRB                                      | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Sun, 06/05/2016 9:25 PM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Subject Officer(s)           | Shield | TaxID  | Command |
|------------------------------|--------|--------|---------|
| 1. POM Christophe Napolitano | 10704  | 956966 | MTS PCT |

| Officer(s)                  | Allegation  | Investigator Recommendation |
|-----------------------------|---|-----------------------------|
| A.POM Christophe Napolitano | Abuse: Police Officer Christopher Napolitano stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. |                             |
| B.POM Christophe Napolitano | Abuse: Police Officer Christopher Napolitano threatened to issue a summons to § 87(2)(b)                            |                             |
| C.POM Christophe Napolitano | Abuse: Police Officer Christopher Napolitano detained § 87(2)(b) and § 87(2)(b)                                     |                             |

### Case Summary

§ 87(2)(b) filed this complaint on behalf of § 87(2)(b) and § 87(2)(b) via the CCRB on-line form on June 5, 2016.

On June 5, 2016, at approximately 1:20 p.m., § 87(2)(b) and § 87(2)(b) together with their three daughters, were riding in a taxi-cab driven by § 87(2)(b). At the intersection of East 31<sup>st</sup> Street and Madison Avenue in Manhattan, § 87(2)(b) merged into the left lane and drove around a truck ahead of him that was allegedly blocking his view and was stopped while the traffic signal was green. § 87(2)(b) observed PO Christopher Napolitano of the 14<sup>th</sup> Precinct directing traffic at the intersection and a parade marching on Madison Avenue. PO Napolitano stopped the cab and told § 87(2)(b) he was driving above the speed limit and he could be issued a summons for it (**Allegations A and B**). § 87(2)(b) told the officer he had not been speeding and rolled up his window. PO Napolitano stepped away from the window and stood in front of the cab. PO Napolitano did not let § 87(2)(b) proceed and allegedly held the cab for approximately 10 minutes, despite the parade having breaks in it and letting other vehicles go (**Allegation C**). § 87(2)(b) asked PO Napolitano why they were being held, and PO Napolitano allegedly replied that he was keeping § 87(2)(b) from driving for talking back to him (**Allegation C continued**). PO Napolitano then let § 87(2)(b) go without issuing him any summonses.

There is no video recording of the incident.

### Mediation, Civil and Criminal Histories

- On June 8 and June 14, 2016, mediation was explained to and rejected by § 87(2)(b) and § 87(2)(b) respectively. § 87(2)(b) provided a telephone statement but did not wish to cooperate further with the investigation.
- On July 29, 2016, a request was submitted to determine if a Notice of Claim was filed; confirmation from the Office of the Comptroller will be forwarded upon receipt [BR 15].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [REDACTED]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) [BR 10].
- This is the first CCRB complaint filed on behalf of § 87(2)(b) and § 87(2)(b) [BR 11, 12].
- PO Napolitano has been a member of the service for two years, and this is the first CCRB complaint filed against him.

## **Findings and Recommendations**

**Allegation A – Abuse of Authority: Police Officer Christopher Napolitano stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B – Abuse of Authority: Police Officer Christopher Napolitano threatened to issue summons to § 87(2)(b)**

During her CCRB phone statement, § 87(2)(b) stated that she, her husband § 87(2)(b) and their three daughters were riding in § 87(2)(b)'s cab toward Pennsylvania Train Station to catch a train [BR 01]. At the intersection of East 31<sup>st</sup> Street and Madison Avenue, the traffic signal was green, but the truck driving ahead of them was stopped. § 87(2)(b) drove around the truck into the left lane and was stopped by PO Napolitano, who was regulating traffic and a parade marching on Madison Avenue. PO Napolitano accused § 87(2)(b) of speeding and disobeying traffic orders. § 87(2)(b) explained to the officer that he was not speeding in a calm voice, and PO1 started raising his voice at § 87(2)(b) accusing him of being disrespectful. § 87(2)(b) believed that PO Napolitano wanted to initiate an argument with § 87(2)(b) and exercise his authority. § 87(2)(b) noted she did not hear the entire conversation between § 87(2)(b) and PO Napolitano and learned the contents of it from § 87(2)(b) who was seating at the front passenger's seat. Additionally, § 87(2)(b) stated § 87(2)(b) was not speeding as the traffic was moving slowly and he simply could not do so. § 87(2)(b) added that § 87(2)(b) was not violating any traffic orders either. Next, PO Napolitano walked away from the vehicle and stood in front of it. In her notarized statement, § 87(2)(b) also alleged that PO Napolitano threatened to issue a summons to § 87(2)(b). All § 87(2)(b)'s statements to the CCRB were consistent except for the threat of summons allegation [BR 08].

In his CCRB phone statement, § 87(2)(b) corroborated § 87(2)(b)'s account of the circumstances preceding the vehicle stop [BR 02]. § 87(2)(b) also confirmed that § 87(2)(b) was not exceeding the speed limit as the traffic was heavy and he would not be able to do so. § 87(2)(b) was consistent throughout his statements to the CCRB [BR 07].

In his phone statement to the CCRB, § 87(2)(b) stated that he could not see beyond the truck in front of him, this is why he moved to the left lane to pass it [BR 06]. § 87(2)(b) observed PO Napolitano who signaled him to stop. PO Napolitano's body language conveyed to § 87(2)(b) that the officer was questioning § 87(2)(b) whether he had seen him. § 87(2)(b) stopped the vehicle and observed a parade marching on Madison Avenue. PO Napolitano approached § 87(2)(b) on the driver's side and asked whether he was aware of the speed limit. § 87(2)(b) replied he was driving below the speed limit. In response, PO Napolitano told § 87(2)(b) he could issue him a speeding ticket, and § 87(2)(b) objected to that. PO Napolitano started using a confrontational tone, and § 87(2)(b) rolled up his window to avoid any further confrontation. § 87(2)(b) noted he was not disrespectful toward the officer and simply explained his actions to him. PO Napolitano stood by the car for approximately two seconds and walked toward its front.

When interviewed at the CCRB, PO Napolitano stated that he was assigned to the intersection to regulate the Philippine Independence Day Parade [BR 09]. While the traffic light was green, the parade started marching on Madison Avenue, and PO Napolitano stopped the traffic on East 31<sup>st</sup> Street. PO Napolitano observed a taxi-cab drive into the parking lane on its left and estimated that it accelerated to approximately 30 to 35 miles per hour, which led PO Napolitano to believe that § 87(2)(b) was attempting to pass the green traffic light. The taxi passed approximately 15 vehicles and stopped when the driver, § 87(2)(b) noticed the officer. PO

Napolitano did not recall whether there was anything blocking the view of the driver at the time. PO Napolitano approached § 87(2)(b) on the driver's side, told him he was driving quite fast and questioned him whether he was aware of the speed limit. § 87(2)(b) started flailing his arms and yelling that he had not been speeding. § 87(2)(b) became uncooperative, refused to have a conversation with PO Napolitano and closed his window. The conversation lasted for approximately 10 seconds, and PO Napolitano did not yell or raise his voice at § 87(2)(b). PO Napolitano stepped away from the cab and stood in front of it to deescalate the situation and avoid any further confrontation with § 87(2)(b). PO Napolitano noted that § 87(2)(b) could have been issued a summons for reckless driving, unsafe lane change or speeding. However, PO Napolitano did not recall saying to § 87(2)(b) he could have been issued a summons. PO Napolitano noted that since he was referring to § 87(2)(b)'s rate of speed, § 87(2)(b) may have assumed that PO Napolitano meant he could have issued him a summons for that. PO Napolitano added that the parking lane where § 87(2)(b) drove had construction as well.

Google Maps Street View confirms that at East 31<sup>st</sup> Street is a one-lane road with two parking lanes on each side [BR 20].

According to New York State Vehicle Traffic Law §1128 (a), a vehicle should not be moved from one lane to another unless a driver has ascertained the movement can be executed safely [BR 17]. New York State Vehicle Traffic Law §1124 states that passing a vehicle to the left is permitted only when the left side is clearly visible [BR 21]. As per New York State Vehicle Traffic Law §1123, a vehicle cannot be overtaken if there is a lane obstructed by parked vehicles. Reckless driving is defined by the New York State Vehicle Traffic Law §1212 as driving that interferes with the free and proper use of public highway or unreasonably endangers the motorists [BR 22]. According Criminal Procedure Law § 140.50, an officer may stop an individual if he/she believes that the individual has committed, is committing or is about to commit a crime [BR 19].

§ 87(2)(g)

**Allegation C – Abuse of Authority: Police Officer Christopher Napolitano detained § 87(2)(b)**

**and § 87(2)(b)**

In her phone statement, § 87(2)(b) alleged that after PO Napolitano walked away from the cab, he signaled to § 87(2)(b) he was not free to leave [BR 01]. When the parade had a break, PO Napolitano let the vehicles to the right of the cab proceed while intentionally holding the taxi. After some time, § 87(2)(b) asked PO Napolitano what was happening, and the officer replied, “You’re not moving.” § 87(2)(b) told PO Napolitano that her family was late for their train and questioned the officer why he was holding the passengers if he believed the driver had committed a traffic infraction. PO Napolitano told § 87(2)(b) he was holding the cab because § 87(2)(b) “talked back” to him. § 87(2)(b) informed PO Napolitano she would file a complaint against him and took his photograph. After that, PO Napolitano let the taxi go after keeping it for approximately 15 minutes. § 87(2)(b)'s CCRB statements were consistent in regards to this allegation [BR 08].

During his phone statement, § 87(2)(b) stated that after talking to § 87(2)(b) PO Napolitano returned to the intersection and continued to regulate traffic [BR 02]. Periodically, there were breaks in the parade, but PO Napolitano did not let any cars proceed. In approximately 10 minutes, PO Napolitano let the van and cars behind it move, but did not let the taxi go since the officer was standing directly in front of it. § 87(2)(b) believed that PO Napolitano was punishing the driver, and as a result of the officer's actions, § 87(2)(b)'s family missed their train. When § 87(2)(b) exited the taxi and asked PO Napolitano why he was holding the cab, the officer replied he was punishing § 87(2)(b) for being disrespectful to him. PO Napolitano then turned to § 87(2)(b) and asked whether § 87(2)(b) agreed that § 87(2)(b) had been discourteous to him. § 87(2)(b) replied he believed PO Napolitano was being disrespectful, and the officer stated he would let them go. After holding the cab for approximately 15 minutes, PO Napolitano allowed § 87(2)(b) to proceed. § 87(2)(b) was consistent in his statements to the CCRB [BR 07].

§ 87(2)(b) confirmed that after talking to him, PO Napolitano walked away from the window and stood in front of the taxi between the two lanes [BR 06]. There were breaks in the parade and the traffic signal was green, but PO Napolitano did not let any of the cars accumulated on East 31<sup>st</sup> Street proceed. § 87(2)(b) believed PO Napolitano was holding the traffic intentionally because of their earlier interaction. The drivers behind § 87(2)(b) became agitated and started honking the horns. After some time, § 87(2)(b)'s passengers became upset as they realized PO Napolitano was holding the traffic due to his conversation with § 87(2)(b) § 87(2)(b) exited the taxi and informed PO Napolitano she was going to report him, after which the officer let the cars pass. § 87(2)(b) stood at the intersection for approximately 10 minutes.

PO Napolitano stated that after he stepped away from § 87(2)(b) he decided he would stand in front of the cab and let other vehicles proceed prior to letting § 87(2)(b) go since he had created dangerous driving conditions [BR 09]. PO Napolitano did not obtain § 87(2)(b)'s identification at any point and made a decision to hold the cab after stepping away from it. The next time there was a break in the parade, PO Napolitano let some of the vehicles proceed but kept the cab standing to "correct" the situation instead of issuing § 87(2)(b) a summons. Four or five cars proceeded, and § 87(2)(b) started complaining that she had missed a train because of PO Napolitano's actions. After letting 10 to 15 vehicles go, PO Napolitano stepped away and let § 87(2)(b) proceed. PO Napolitano explained that as he stepped away from the taxi, he assumed that keeping them stopped was a better alternative to the summons and he used his discretion in that situation. PO Napolitano confirmed that the vehicle stop lasted for approximately 10 minutes. PO Napolitano denied saying, "You're not moving," to § 87(2)(b) and explained he did not detain her and her family as they were free to leave at any point. Additionally, PO Napolitano denied saying to § 87(2)(b) he was holding the cab to punish § 87(2)(b).

When conducting a valid vehicle stop, an officer may not prolong it once he/she had concluded their investigation and there is no other reason to hold the vehicle [BR 16]. People v. Porter, Feb. 5, 2016, NY Sup. Court, App. Div., 1394 KA 11-00289. Additionally, according to P.G. 212-11, when conducting Level 3 stops, authority to detain the suspect ends when the tasks tied to the reason for the stop are completed or reasonably should have been completed [BR 18].

§ 87(2)(g)

§ 87(2)(g)

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Squad: 3

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date